

JOHNNY DELAROSA # 42240-080

Name and Prisoner Number/Alien Registration Number

UNITED STATES PENITENTIARY TUCSON

Place of Confinement

PO BOX 24550

Mailing Address

TUCSON, AZ. 85734

City, State, Zip Code

FILED	LOGGED
RECEIVED	COPY
9 JUL - 5 2018 9	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

JOHNNY DELAROSA

(Full Name of Petitioner)

CV 18-0330 TUCJGZ BPV

Petitioner,

CASE NO.

(To be supplied by the Clerk)

vs.

WARDEN JT SHARTLE

(Name of Warden, Jailor or authorized person
having custody of Petitioner)

**PETITION UNDER 28 U.S.C. § 2241
FOR A WRIT OF HABEAS CORPUS
BY A PERSON IN FEDERAL CUSTODY**

Respondent.

PETITION

1. What are you challenging in this petition?

- ☐ Immigration detention
☐ Bureau of Prisons sentence calculation or loss of good-time credits
☐ Probation, parole or supervised release

☒ Other (explain): AN ILLEGAL SENTENCE UNDER THE SAVINGS CLAUSE
THAT RENDERES THE DETENTION IN VIOLATION OF THE EIGHTH AMENDMENT

2. (a) Name and location of the agency or court that made the decision you are challenging: US DISTRICT
COURT WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

(b) Case or opinion number: CASE # 1:08-CR-084-SS-2

(c) Decision made by the agency or court: Guilty by plea, sentenced to life Term
under 21 USC § 851

(d) Date of the decision: September 5, 2008

3. Did you appeal the decision to a higher agency or court? Yes ☒ No ☐

If yes, answer the following:

(a) First appeal:

- (1) Name of the agency or court: US COURT OF APPEAL
- (2) Date you filed: _____
- (3) Opinion or case number: 11-50840
- (4) Result: Denied
- (5) Date of result: Sept 9 2012
- (6) Issues raised: 1) Court Abused discretion by failing to withdraw plea 2) Court Abused discretion for USSC enhancements

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(b) Second appeal:

- (1) Name of the agency or court: NA
- (2) Date you filed: _____
- (3) Opinion or case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(c) Third appeal:

- (1) Name of the agency or court: NA
- (2) Date you filed: _____

- (3) Opinion or case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

4. If you did not appeal the decision to a higher agency or court, explain why you did not: N/A

5. Other than the appeals listed above, have you filed any other petitions, applications or motions concerning the issues raised in this petition? Yes ☒ No ☐

If yes, answer the following:

- (a) Name of the agency or court: U.S. Dist. Ct. Western Dist TEXAS, Austin
- (b) Date you filed: March 16 2016
- (c) Opinion or case number: 1:15-cv-883-55 / 5th Cirth 15-51205
- (d) Result: Denied
- (e) Date of result: _____
- (f) Issues raised: Actual Innuance

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

6. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available administrative remedies on each ground on which you request action by the federal court.

GROUND ONE: Mr Delarosa is serving an illegal sentence where the sentencing court refused to allow a withdrawal of the plea agreement in accordance with F.R.Cr.P. Rule 11(c)(5):

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

At sentencing Mr Delarosa requested to withdraw his plea when conduct that he did not plea to was added to his conduct to increase his sentence. (See Memorandum of Law)

(b) Did you exhaust all available administrative remedies relating to Ground One? Yes ☒ No ☐

(c) If yes, did you present the issue to:

☐ The Board of Immigration Appeals

☐ The Office of General Counsel

☐ The Parole Commission

☒ Other:

US Dist CT Austin Texas & US CT Appeals 5th Cir

(d) If you did not exhaust all available administrative remedies relating to Ground One, explain why:

N/A

GROUND TWO: Mr. Delarosa is factually actually innocent of 28 USC
§ 851 career offender and is serving a sentence in violation of
The 8th Amendment of the U.S. Constitution:

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

Pursuant to new controlling case law the possession of
marijuana is no longer a predicate for § 851 sentence
enhancement (See Memorandum of Law)

(b) Did you exhaust all available administrative remedies relating to Ground Two?

Yes ☒ No ☐

(c) If yes, did you present the issue to:

☐ The Board of Immigration Appeals

☐ The Office of General Counsel

☐ The Parole Commission

☒ Other:

US Dist Ct Austin Tx & 5th Cir. Ct. Appeals

(d) If you did not exhaust all available administrative remedies relating to Ground Two, explain why:

N/A

GROUND THREE: Mr. Delarosa is innocent of conduct that was applied to his offense level pursuant to Federal USSG provisions which increased his sentence violating Ex Post Facto Clause of the U.S. Constitution:

- (a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):
USSG enhancements were applied to Mr. Delarosa's conduct that he was not culpability of committing. The addition of the conduct enhancements by USSG violates Ex Post Facto protections where his sentence was affected by conduct that he did not commit.
(SEE MEMORANDUM OF LAW)

(b) Did you exhaust all available administrative remedies relating to Ground Three? Yes ☒ No ☐

(c) If yes, did you present the issue to:

- ☐ The Board of Immigration Appeals
☐ The Office of General Counsel
☐ The Parole Commission

☒ Other: US Dist. Ct Austin Tx & 5th Cir Ct of Appeals

(d) If you did not exhaust all available administrative remedies relating to Ground Three, explain why:

N/A

GROUND FOUR: _____

N/A.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Did you exhaust all available administrative remedies relating to Ground Four?

Yes ☐ No ☐

(c) If yes, did you present the issue to:

☐ The Board of Immigration Appeals

☐ The Office of General Counsel

☐ The Parole Commission

☐ Other: _____

(d) If you did not exhaust all available administrative remedies relating to Ground Four, explain why:

Please answer these additional questions about this petition:

7. Are you challenging your conviction or sentence in any of the grounds raised above? Yes ☒ No ☐
 (Claims challenging a federal conviction or sentence may only be raised in a motion under 28 U.S.C. § 2255, unless the § 2255 motion is legally inadequate or ineffective.)

If yes, answer the following:

- (a) Have you filed a motion under 28 U.S.C. § 2255? Yes ☒ No ☐

If yes, answer the following:

- (1) Name of court: US DIST CT AUSTIN, TX
 (2) Case number: 1:10-CV-799
 (3) Opinion or case number: NA
 (4) Result: Denied
 (5) Date of result: 4-17-12
 (6) Issues raised: (see Memorandum of Law)

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

- (b) Explain why the remedy under § 2255 is inadequate or ineffective: The claims are not newly discovered evidence or involves New Rule of Constitutional Law the previous courts have not reached the merits of the claim's Mc Delarosa's challenge falls within the savings clause exception of 2255 (see Memorandum of Law)

8. If this case concerns immigration removal proceedings, answer the following:

- (a) Date you were taken into immigration custody: NA
 (b) Date of removal or reinstatement order: _____
 (c) Did you file an appeal with the Board of Immigration Appeals? Yes ☐ No ☐
 (1) Date you filed: _____
 (2) Case number: _____

(3) Result: NA

(4) Date of result: _____

(5) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(d) Did you file an appeal with the federal court of appeals? Yes ☐ No ☐

(1) Name of the court: _____

(2) Date you filed: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

9. Petitioner asks that the Court grant the following relief: Mr. Delarosa request for a
show of cause hearing to show why he should not be released from
his illegal confinement due to an illegal sentence (see memorandum of law)

or any other relief to which Petitioner may be entitled. (Money damages are not available in habeas corpus cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on July 2, 2018 (month, day, year).

Johnny De la Rosa
 Signature of Petitioner

 Signature of attorney, if any

 Date